**APPENDIX A**

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 98-30657

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JERON J. LAFARGLTE; SUSAN KYLE, on behalf of themselves and all others similarly situated; RONALD RICHARD, JR-; SEPTUVIE RICHARD, JR.; WINNIFRED RICHARD CHAWAGNE; SHARON RICHARD BIGGS; SIDNEY J. RICHARD, JR., ARTHUR H. OWENS; PRUDENCE LAFARGUE BURNS; HOPE RICHARD SANSING; RICHARD WAYNE OWENS; SHAYNE OWENS BELL; BARBARA VEEDER MCKOIN; CAROL VEEDER WONMffiR; DIANE SIMONS LOVELL,

Plaintiffs-Appellants,

versus

UNITED STATES OF AMERICA, LOUISIANA INTRASTATE GAS COMPANY, L.L.C.,

Defendants-Appellees.

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Appeal from the United States District Court for the Eastern District of Louisiana

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Before REAVLEY, JOLLY and EMILIO M. GARZA, Circuit Judges. REAVLY, Circuit Judge:*

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

The district court's judgment dismissing appellants' complaint is affirmed for the following reasons.

A. *Jurisdiction*

The United States contends that the district court lacked subject matter jurisdiction under the Quiet Title Act. We must address this jurisdictional challenge even if there is an alternative, simpler ground for affirmance on the merits.[1] Further, we cannot agree with appellants that we lack appellate jurisdiction to address the government's challenge to the district court's subject matter jurisdiction because the government did not file a notice of appeal. "Even though an appellee has not filed a cross appeal, he may take the position on appeal that the record supports the court's judgment on any ground, including one rejected or ignored in the lower court."[2] In addition, we have a duty to consider, *sua sponte* if necessary, the basis of the district court's jurisdiction.[3]

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[1] *See United States v. Texas Tech Univ.*, 171 F.3d 279, 286-87 (5th Cir. 1999) (discussing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83 (1998)).

[2] *Hoyt R. Matise Co. v. Zurn*, 754 F.2d 560, 565 n.5 (5th Cir 1985).

[3] *See Solsona v. Warden, F.C.I.*, 821 F.2d 1129, 1132 n.2 (5th Cir. 1987).

Under the Quiet Title Act, 28 U.S.C. § 2409a, "[t]he United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest."[4] The federal district courts have exclusive jurisdiction of civil actions under the Act.[5] However, under the disclaimer provision of the Act: "If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has Jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title."[6]

The United States argues that, after this suit was filed and the sale of the pipeline to Louisiana Interstate Gas Company (LIG) was completed, it filed with the district court a disclaimer of any interest in the pipeline, thereby divesting the court of jurisdiction under the disclaimer provision. As we interpret this provision, the government can disclaim any interest in the property that is the subject of the quiet title action and thereby divest the district court of jurisdiction, but this provision does not apply where the district court had jurisdiction at the commencement of suit and the government thereafter takes affirmative steps to transfer its interest in the subject property. We follow this interpretation for several reasons. First, the language of the disclaimer provision manifests congressional intent to provide the courts with some flexibility in applying the provision, since it provides for a

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[4] *Id.* § 2409a(a).

[5] *See* 28 U.S.C. § 1346(f).

[6] 28 U.S.C. § 2409a(e).

cessation of jurisdiction only if the government's disclaimer is "confirmed by order of the court," rather than requiring dismissal in a mechanical fashion upon the filing of a disclaimer by the government. Second, the government's interpretation of the disclaimer provision would lead to a waste of judicial resources. So long as the government owned or had an interest in the pipeline, any quiet title action had to be brought in federal district court. To force a plaintiff to sue in federal court, and then require the court to dismiss the suit once the government sells the property in question, strikes us as a strained and inefficient result that we do not believe Congress intended. In the words of the Ninth Circuit, our interpretation of the disclaimer provision "permit[s] the plaintiff to have its day in court, [and] also restrains any tendency on the part of the government to manipulate its position subsequent to the filing of the complaint so as to present a situation that falls between the cracks of applicable waiver statutes."[7] While we accept the government's contention that the sale of the pipeline was not in response to the suit, our interpretation of the statute is consistent with the general rule that subject matter jurisdiction is determined at the time the complaint is filed.[8] "Importantly, the jurisdictional facts must be judged as of the time the complaint is filed- subsequent events cannot serve to deprive the court of jurisdiction once it has attached."[9]

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[7] *Bank of Hemet v. United States*, 643 F.2d 661, 665 (9th Cir. 1981).

[8] *See Carney v. RTC*, 19 F.3d 950, 954 (5th Cir. 1994).

[9] *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253-54 (5th Cir. 1998).

Our interpretation is also consistent with our decision in *Delta Savings & Loan Association v. IRS*.[10] In *Delta Savings*, a lender had foreclosed on a house owned by a bankruptcy debtor. The IRS exercised a statutory right of redemption of property the plaintiff-lender had acquired through foreclosure. The lender sued the IRS. The main issue, not relevant here, was whether the IRS had made an adequate tender to the lender. The IRS also claimed that the district court had no jurisdiction. In a footnote, we held that the court had jurisdiction under the Quiet Title Act, even though the IRS had sold the house prior to being served:

> Although this action was not formally denominated a quiet title action, we believe that it is in substance such an action, the theory being that the United States failed to acquire good title to the property in question by reason of an inadequate tender, and is therefore susceptible of jurisdiction. The IRS challenges this conclusion, arguing that because the government relinquished its ownership interest prior to being served, section 2409a is inapplicable. We disagree. In *Bank of Hemet v. United States*, 643 F. 2d 661 (9th Cir. 1981), the Ninth Circuit held that where a party had filed a complaint and a *lis pendens* but had not effected service prior to sale of the disputed property, "the presence of a waiver of sovereign immunity should be determined as of the date the complaint was filed." *Id* at 665. Here, it is undisputed that Delta filed both a lis pendens and a complaint on August 22, 1986, three days before the public auction at which the property in question was sold. Thus, even though service was not effected until September 22, 1986, under the rule announced in *Bank of Hemet*, the presence of a waiver should be determined as of August 22, 1986. Because the government still owned the

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[10] 847 F.2d 248 (5th Cir. 1988).

property on that date, we find that section 2409a's waiver is applicable and hence that jurisdiction is proper under section 1346(f).[11]

Factually, in the pending case the complaint was filed and the government was served before the sale of the pipeline, while in *Delta Savings and Bank of Hemet,* the suit had been filed but the government had not been served before the government sold the property in issue. Regardless, the principle followed in *Delta Savings* and *Bank of Hemet* is the general principle that jurisdiction should be determined on the facts as they existed when the complaint was filed. By this reasoning, the district court correctly held that it had jurisdiction because the government still owned the pipeline at the time the suit was filed.

The government points out that in *Delta Savings* and *Bank of Hemet* it did not disclaim all interest in the property under the disclaimer provision of the Act. While the disclaimer provision is not cited in these decisions, in both the government plainly argued that the district court lacked subject matter jurisdiction because the property in issue had been sold by the government subsequent to suit."[12] The key concept recognized in *Delta Savings,* consistent with general principles of jurisdiction, is that "'the presence of a waiver of sovereign immunity should be determined as of the date the complaint

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[11] *Id.* at 249 n. 1.

[12] *See id.* (noting that IRS challenged jurisdiction "because the government relinquished its ownership interest prior to being served"); *Bank of Hemet,* 643 F.2d at 664.

was filed.'"[13] We therefore agree with the district court that it had subject matter jurisdiction.

B. *Ownership of the Servitude*

As we understand appellants' position, they argue that the decommissioning of the pipeline by the government for use in supplying petroleum to the Weeks Island facility, a Strategic Petroleum Reserve Program (SPRP) facility, amounted either to an "abandonment" of the pipeline, or the occurrence of a resolutory condition of the servitude. Under either theory, appellants contend that, under the servitude they granted to the government, the ownership of the servitude and pipeline reverted to them.

We have recently held that the Quiet Title Act should be interpreted "in accordance with principles of federal law," and, "while courts may properly look to state law as an aid in determining the application of statutory language to specific facts, such state law should be compatible with the purpose of the legislation so as to find the rule that will best effectuate federal policy."[14]

The parties cannot agree whether the Donation of Servitude and Easement, sometimes referred to as the Richard Donation, created a predial or personal servitude under

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[13] *Delta Savings*, 847 F.2d at 249 n. 1 (quoting *Bank of Hemet*, 643 F.2d at 665).

[14] *Bank One Texas v. United States*, 157 F.3d 397, 403 (5th Cir. 1998) (internal quotation marks, citations, and alterations omitted), *cert. denied*, 119 S. Ct. 1761 (1999).

Louisiana law. We do not see this issue as dispositive.[15] We think instead that general principles of contract and property law, recognized in Louisiana and elsewhere, should guide our decision. General contract law should govern construction of the servitude, whether it is characterized as a predial or personal servitude.[16] Questions concerning the construction or

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[15]*See Heirs of Primeaux v. Erath Sugar Co.*, 484 So. 2d 717, 720 (La. Ct. App. 1986) (noting that conveyance of land by landowner to sugar company for use as a site for a sugar refinery, and with right of reversion to heirs if refinery ceased operations, could be characterized as "a conventional predial servitude" or "could equally be termed a limited personal servitude").

[16]*See Brown v. Rougon*, 552 So. 2d 1052, 1056 (La. Ct. App. 1989) (holding that right-of-way deed is "subject to the general rules for the interpretation of contracts"); *Ryan v. Monet*, 666 So. 2d 711, 714 (La. Ct. App. 1995) ("A document purporting to create a predial servitude is interpreted in accordance with both the general rules of contract construction as well as in accordance with specific rules of construction for instruments that purport to create servitudes."); La. Civ. Code art. 645 (providing that personal servitudes are regulated by rules governing predial servitudes to the extent their application is compatible with rules governing personal servitudes); *Heirs of Primeaux*, 484 So. 2d at 720 (noting that personal servitudes are governed by laws of usufruct and predial servitudes). We also note that the assignability of a servitude is not necessarily affected by a characterization of the servitude as a personal servitude, as opposed to a predial servitude, the latter being generally analogous to a covenant running with the land under Anglo-American common law, *see* La. Civ. Code art. 650 ("A predial servitude is inseparable from the dominant estate and

interpretation of contracts are questions of law and are accordingly reviewed de novo.[17]

Louisiana law recognizes that a servitude on real property can contain a reversionary interest in favor of the donor or vendor, a form of "resolutory condition."[18] The Richard Donation expressly provides that the servitude granted the government terminates upon "abandonment." However, we cannot agree with appellants that the government's sale of the pipeline amounted to an abandonment of it. First, Louisiana courts, consistent with the generally accepted usage of the term, recognize that abandonment implies the relinquishment of property without vesting ownership in another.[19]

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passes with it"), since personal servitudes are assignable under Louisiana law. *See* La. Civ. Code art. 643.

[17]*See L & A Contracting Co. v. Southern Concrete Servs., Inc.*, 17 F. 3 d 106, 109 (5th Cir. 1994).

[18]*See Heirs of Primeaux,* 484 So. 2d at 721 (noting that "[t]he jurisprudence of Louisiana has long recognized reversionary interests in real property" and describing such reversionary interests as a form of resolutory condition); La. Civ. Code art. 773 (providing that predial servitude established under a resolutory condition expires upon the happening of the condition).

[19]*See* Taussig v. Goldking Properties Co., 495 So. 2d 1008, (La. Ct. App. 1986) (""Abandonment" of property or of a right is the voluntary relinquishment thereof by its owner or holder, with the intention of terminating his ownership, possession and control, and without vesting ownership in any other person.") (quoting *Salim v. Louisiana State Bd. of Educ.*, 289 So. 2d 554, 560 (La. Ct. App. 1974). *See also* BLACK LAW

Second, characterizing the sale of the pipeline to LIG as an abandonment of it would, by appellants' interpretation of the instrument, render the pipeline unassignable. Any effort to assign the pipeline to another, by sale or otherwise, would cause the government's ownership of the servitude to terminate. Under the terms of the Richard Donation, abandonment of the easement results in its termination; termination puts the government to the option of removal of the pipeline or "abandonment on place," which results in the reversion of the pipeline to the donors. Either way, the government could not assign the pipeline and servitude to a third party. Such an interpretation squarely conflicts with other provisions of the Richard Donation, which provide that the donors are conveying to the United States "and its assigns"; "a perpetual and assignable easement and right-of-way," and that the "perpetual rights . . . of the easement and/or servitude" are conveyed to the United States "and its assigns . . . forever . . ." An interpretation that renders an assignment of the pipeline to a third party an "abandonment" of it therefore runs afoul of basic rules of contract interpretation. Under Louisiana law, "[e]ach provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole."[20] Contract provisions should be

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DICTIONARY 2 (5th ed. 1979) (defining abandonment as "[t]he voluntary relinquishment of possession of thing by owner with intention of terminating his ownership, but without vesting it in any other person").

[20]La. Civ. Code art. 2050. *See also Heirs of Primeaux*, 484 So. 2d at 720-21 ("The rule of interpretation is that effect must be given to all of the stipulations in an instrument, if possible, in order to give full effect to the intention of the parties, after viewing the document as a whole.").

interpreted "to avoid neutralizing or ignoring any of them or treating them as surplusage."[21]

Alternatively, appellants argue that the servitude terminated because, under its provisions, a termination occurs if the government (or an assignee) stops using the pipeline as part of the SPRP. True, the Richard Donation states that the conveyance of the easement and right-of-way is made to the government "for the location, construction, [etc.] of a single pipeline in the establishment, management, and maintenance of the Strategic Petroleum Reserve." The Donation goes on to state that the servitude "is acquired by the United States of America for and in connection with the Department of Energy's Strategic Oil Storage Program," and that the donation is made "in consideration of Grantors' desire to aid their country in the establishment of a Strategic Petroleum Reserve and in further consideration of the Grantee's agreement to construct and operate said pipeline." While we admire appellants' patriotic motive and commend their generosity, we must agree with the district court that the Donation did not provide for termination in the event the government ceases operating the pipeline as part of the SPRP. Examining the document as a whole, there are specific grounds for termination of the servitude, including ten years of non-use, abandonment, as discussed above, and the failure of the government to commence construction of the "Strategic Petroleum Reserve pipeline" by December 1, 1981. The Donation, however, did not provide for termination if, after construction and use of the pipeline as a part of the SPRP, the use of the pipeline changed. While the Donation does state that it is made for the construction of a pipeline "in the establishment . . . of the Strategic Petroleum Reserve" and

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[21] *Lambert v. Maryland Cas. Co.*, 418 So. 2d 553, 559 (La. 1982).

expresses the grantor's desire to aid "in the establishment of a Strategic Petroleum Reserve," it does not provide for a reversion to the grantors if in the future the original purpose has been fulfilled but the pipeline's use as a part of the SPRP comes to an end. Given this lack of an express cause for termination upon a change in the use of the pipeline, we cannot interpret the Donation to provide for an implied termination on this basis. As one court has explained:

> The jurisprudence of Louisiana has long recognized reversionary interests in real property. The failure of the donor or vendor to reserve expressly a right of reversion constitutes a divestiture or abandonment of any such right-, in the absence of a reversionary clause the heirs or assigns of the donor or vendor cannot set aside the transfer or repossess the property because of a failure by the donee or vendee to use the property for the restrictive purposes for which it was sold.[22]

Further, appellants' request that we read an implied additional ground for termination into the instrument is all the more untenable given the express language of the donation, quoted above, which provides for the conveyance of a "perpetual" and "assignable" servitude. Given this general language of conveyance - "perpetual" is used three times, "assigns" is used twice, "forever" and "assignable" are used once - we cannot construe the Donation to provide for this additional, unstated, ground for termination.

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[22] *Heirs of Primeaux*, 484 So. 2d at 721 (citations omitted).

We also find persuasive three cases from other jurisdictions where property interests were conveyed to the United States for life-saving stations.[23] The instruments conveying the property interests stated that the purpose of the conveyances was the establishment of lifesaving stations.[24] However, like the pending case, the conveyances did not expressly provide that the property interests reverted to the original grantors if the purpose or use of the property changed. The plaintiffs claimed that conveyances terminated after the use of the land in issue changed. In each case, the court ruled that the property interests did not revert to the grantor. In two of the cases, the courts reasoned that "'[t]he mere recital in the deed of the purpose for which the land conveyed was to be used is not in itself sufficient to impose any limitation or restriction on the estate granted."[25] In the third case, the court reasoned that "[d]eed language alleged to create a determinable fee is strictly construed, to avoid a forfeiture," and declined "to construe the language of purpose contained in this deed as an expression of intent to return the property to the grantor when the purpose has been exhausted or satisfied."[26] We essentially agree with the reasoning of these cases.

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[23]See United States Trust Co. v. New Jersey, 543 A.2d 457 (N.J. Super. Ct. App. Div.1988); *Lethin v. United States*, 583 F. Supp. 863 (D. Or. 1984); *Selectment of the Town of Nahant v. United States*, 293 F. Supp. 1076 (D. Mass. 1968).

[24]*United States Trust Co.*, 543 A.2d at 459; *Lethin*, 583 F. Supp. at 865-66; *Town of Nahant*, 293 F. Supp. at 1077.

[25]*Lethin*, 583 F. Supp. at 871 (quoting *Town of Nahant*, 293 F. Supp. at 1078).

[26]*United States Trust Co.*, 543 A.2d at 462.

C. *Supplemental Jurisdiction*

Appellants complain that the district court erred in declining to exercise supplemental jurisdiction over a state law claim asserted by some plaintiffs for lesion beyond moiety. This claim, essentially a state law claim for rescission based on inadequate consideration,[27] involves separate right-of-way agreements these plaintiffs entered into with LIG. LIG entered into these agreements to foreclose claims by the plaintiffs that LIG had not acquired good title to the servitude discussed above. Appellants concede that if we affirm the district court's summary judgment in favor of the government and LIG, agreeing with the district court that the servitude did not terminate and revei-t to the plaintiffs, then the state claim is moot.[28] We agree.

D. *Denial of Motion to Compel*

Appellants argue that the district court erred in denying a motion to compel production from the government of a document discussing the government's sale options for the pipeline. The government claimed attorney-client privilege. Plaintiffs concede that the document in issue is "a legal analysis." The government contends that the district court denied the motion to compel because it was filed after the discovery cutoff and the document was irrelevant to the court's interpretation of the Richard Donation, while appellants

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[27]*See* La. Civ. Code art. 2589.

[28]*See* appellants' opening brief at 47 (stating that "if the Plaintiffs do not have title to the pipeline due to the termination of the Richard Donation and the abandonment of the pipeline, the Plaintiffs' lesion claim is moot").

maintain that the motion was timely. "The trial judge's decision to curtail discovery is granted great deference and, thus, is reviewed under an abuse of discretion standard."[29] There was no abuse of discretion. The district court decision, and our own, turn on the law and the language of the Richard Donation itself. The government's prior analysis of the legal issues presented is irrelevant.

AFFIRMED.

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[29]*Wichita Falls Office Assocs. v. Banc One Corp.*, 978 F.2d 915, 918 (5th Cir. 1992).

EMILIO M. GARZA, Circuit Judge, dissenting:

The district court was stripped of subject-matter jurisdiction over the plaintiffs' Quiet Title Act ("QTA") claims.[1] The QTA's disclaimer provision states:

> If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title.

28 U.S.C. § 2409a(e). The Government, pursuant to this provision, filed a disclaimer of any interest in the pipeline before the trial of this case actually commenced. As there was no other jurisdictional basis for the QTA claims, the district court at this point should have confirmed the disclaimer,[2] and

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[1]The district court concluded that counts I through V of the complaint arise solely under the QTA. The plaintiffs do not appeal this holding.

[2]I agree with the Government that confirmation "formalize[s] by court order the disclaimer . . . so that the disclaimer may be relied upon by others." We must construe the disclaimer provision, as a condition to a waiver of sovereign immunity, strictly in favor of the Government. *See Block v. Notih Dakota ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 287, 103 S. Ct. 1811, 1819, 75 L. Ed. 2d 840, ____ (1983) (QTA) ("when Congress attaches conditions to legislation waiving sovereign immunity of the United States, those conditions must be strictly

dismissed the QTA claims for lack of subject-matter jurisdiction.

Accordingly, I dissent.

**U.S. COURT OF APPEALS**
**FILED**
**OCTOBER 13 1999**
**CHARLES R. FULBRUGE, III**
**CLERK**

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observed, and exceptions thereto are not to be lightly implied"). This rule of construction requires us to interpret the disclaimer provision in a way that maximizes the extent of the Government's ability to disclaim. To satisfy this mandate, we must conceptualize confirmation as a ministerial function, and not a discretionary function, of the district court. *But see, W. H. Pugh Coal Co. v. United States,* 418 F. Supp. 538, 539 (E.D. Wis. 1976) (indicating that the district court should refuse to confirm when the Government disclaims in bad faith).

**APPENDIX B**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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| JERON J. LAFARGUE, et al.<br>on behalf of themselves and<br>all others similarly situated | CIVIL ACTION<br>NO. 97-2393<br>SECTION "R"<br>(1) |

VERSUS

THE UNITED STATES OF AMERICA and
LOUISIANA INTRASTATE GAS COMPANY

ORDER AND REASONS GRANTING
DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT

This matter comes before the Court on cross-motions for summary judgment filed by the plaintiffs and defendants United States of America (the "Government") and Louisiana Intrastate Gas Company, L.L.C. ("LIG"). For the reasons set forth below, plaintiffs' motion is DENIED, and defendants' motions are GRANTED.

## I. BACKGROUND

As summarized by the Court in its Order and Reasons denying defendants' motions to dismiss, see Lafargrue v. *United States*, ____ F.Supp. _____, Civ.A.No.97-2393, 1998 WL 167270 (E.D. La. Apr. 8, 1998), this case revolves around the ownership of a pipeline and underlying servitudes located in the Louisiana Parishes of Iberia, St. Mary, St. Martin, St.

James, and Assumption. The servitudes were acquired and the pipeline was constructed by the government as part of its Strategic Petroleum Reserve Plan ("SPRP'l), a program that was established under the Energy Policy and Conservation Act ("EPCA"), 42 U.S. C. § 62 01, *et seq.* The SPRP was intended to serve as a reserve to reduce the impact of energy supply interruptions or reductions in imports of crude oil and refined petroleum products. Under the EPCA, and to the extent necessary or appropriate to implement the SPRP, the government is authorized to "acquire by purchase, condemnation or otherwise, land or interests in land for the location of storage and related facilities. 42 U.S.C. § 6239 (f) (1) (B). The government may also "construct, purchase, lease or otherwise acquire storage and related facilities," and "use, lease, maintain, sell, or otherwise dispose of storage and related facilities acquired pursuant to this part." Id. 9 6239(f)(1)(C),

(D) Further, the government is authorized to "execute any contracts necessary to carry out the provisions" of the SPRP. Id. § 6239(f) (1) (G).

In furtherance of the SPRP, the government sought to construct a 36-inch diameter pipeline to extend approximately 67 miles from the St. James Terminal to the Weeks Island Facility. In order to lay the Pipeline, and pursuant to statutory authority, the Government secured rights-of-way from landowners by means of direct purchase, condemnation, or donation. The named plaintiffs in this proposed class action are parties r-o a certain Donation of Servitude and Easement dated

August 10, 1979 (hereinafter "the Donation").[1] The Donation states:

> The above named parties declare that we, by this act, do donate, convey, transfer, set over and deliver, without any warranty, liability, or recourse, but with full substitution and subrogation in and to all rights and action of warranty which said grantors have or may have against all preceding owners and vendors, unto the United States of America, and its assigns, including its officers, agents, servants, and contractors, a perpetual and assignable easement and right-of-way in, on, over and across the land for the location, construction, operation, maintenance, alteration, repair, and patrol of a single pipeline in the establishment, management, and maintenance of the Strategic Petroleum Reserve.

Donation at 2. The Donation includes a provision on the causes and procedures for the termination of the easements:

> This donation is made and accepted for and in consideration of Grantors' desire to aid their country in the establishment of a Strategic Petroleum Reserve and in further consideration of Grantee's agreement to construct and operate

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[1] Plaintiffs noted in prior memoranda submitted to the Court that while this specific Donation of Servitude and Easement pertains only to a small portion of the Pipeline, there are several hundred other landowners who made similar donations, as well as other types of conveyances to the government.

said pipeline in accordance with the following specific requirements:

1. The rights herein donated to Grantee shall expire, terminate, and cease and this act shall be rendered null, void and unenforceable on December 31, 1981 if by such date Grantee shall have not commenced construction of the Strategic Petroleum Reserve pipeline.

2. The causes for termination of this easement shall include, but not be limited to, the following: (a) abandonment, (b) removal of the pipeline, (c) ten years non-use, or (d) execution of an affidavit by an authorized representative of the United States of America stating that the pipeline has been abandoned. Upon termination for any reason the United States of America shall have the election at its sole discretion of abandoning the pipeline and related improvements in place or removing it at its own expense. Such removal, if so elected, shall be completed within one year after termination. if abandonment in place is elected, Grantee shall have no claim against Grantors for compensation or damages, and the pipeline and related improvements shall become the property of the Grantors without any payment to the Grantee.

Donation at 5.

The construction of the Pipeline was completed in 1979, and it was in continuous service as part of the SPRP from

October 1980 to March 1997. During this time, the Pipeline was used to transport crude oil between the St. James Terminal and the Weeks Island Facility. In recent years, due in part to a geotechnical problem related to the underground storage facility at Weeks Island, the Government removed the oil from that location and in March 1997, decommissioned the Pipeline. The Government no longer uses the Pipeline to transport oil between the two locations.

After the decision to decommission the Pipeline was made, the Government solicited bids from interested parties for the sale of the Pipeline and the perpetual easements. After this suit was filed, the Government sold and conveyed to LIG, "as is" and "where is" under a quitclaim deed executed August 22, 1997 all title, right, and interest the Government had in the Pipeline and the perpetual easements for a total sum of $22,000,000. LIG intends to integrate the Pipeline into its existing pipeline system, which is used for the transportation of natural gas.

Prior to the August 22, 1997 sale, LIG--"out of an abundance of caution"--attempted to enter into new conventional right-of-way and servitude agreements with the landowners along the length of the pipeline (hereinafter the "LIG Agreement"). The LIG Agreement 5 states that the new servitude will be subject to the Donation and that the Donation will terminate when LIG begins operations of the existing Pipeline as a natural gas pipeline or when the Government transfers all of its rights in the Donation, whichever comes first. See Compl., Exh. B. LIG contends that 95!k of the landowners along the length of the Pipeline have entered into such agreements. LIG's Answer ¶ 1A.

Plaintiffs initiated this class action on July 31, 1997 and filed a first amended complaint on October 24, 1997. Plaintiffs, proposed class is defined as all those persons and entities who granted servitudes and easements in favor of the Government for the location, construction, operation, maintenance, alteration, repair, and patrol of the Pipeline. Compl. ¶ 8. The plaintiffs also propose two subclasses: (1) All those persons and entities who fall into the proposed class and who executed the LIG Agreement, or similar documents; (2) All those persons and entities who fall into the proposed class and who did not execute the LIG Agreement, or similar documents. Compl. ¶ 9.

In its Order and Reasons denying defendants' motions to dismiss, this Court concluded that plaintiffs' case was exclusively brought under the Quiet Title Act, 28 U.S.C. § 2409a (QTA) . Consequently, the Court dismissed Counts II, III, IV, and V of plaintiffs, complaint because they sought relief that is not available under the QTA. The Court also declined to exercise supplemental jurisdiction over Count IV of plaintiffs' complaint, a claim requesting this Court to determine whether the Pipeline constitutes a corporeal immovable under Louisiana law and whether certain plaintiffs' agreements with LIG should be rescinded for lesion beyond moiety. The Court further refused supplemental jurisdiction over LIG's counterclaim for expropriation of plaintiffs, property

The lawsuit in this Court is therefore whittled down to a single issue: Whether the servitudes granted to the Government by the plaintiffs have been terminated, extinguished, and/or abandoned as a result of the alleged non-use of the Pipeline and the alleged decommissioning of the Weeks Island Facility. Plaintiffs allege that the servitudes have expired and/or terminated for the following reasons:

(a) the Government, through its own actions, has permanently discontinued the use of the Servitudes for the purpose for which they were granted, i.e., in connection with the Strategic Petroleum Reserve, and has transferred, or is in the process of transferring its right under the Servitudes and to the Pipeline to a transferee engaged in the business of transporting natural gas, rendering it impossible for the Government to use the Servitudes for the purposes required thereby;

(b) the Servitudes were granted subject to the express or implied resolutory condition that the Pipeline be used solely in connection with the Strategic Petroleum Reserve Program and the resolutory condition has been fulfilled;

(c) the Government has decommissioned, or is in the process of decommissioning the Weeks Island Facility and the Pipeline; and/or

(d) the Government has renounced the Servitudes.

Compl. ¶ 42.

Before the Court are the parties' cross-motions for summary judgment. The Court rules as follows.

## II. DISCUSSION

### A. Summary of Arguments

Plaintiffs suggest that the Donation must be interpreted under Louisiana law, and they offer three theories based on state law principles governing predial servitudes in support of their position that the servitudes donated to the Government have terminated and/or expired: (1) the dominant estate, Weeks Island, was destroyed; (2) the servitude is no longer used in a manner consistent with the Donation; and (3) the servitudes were granted subject to the resolutory condition that the Pipeline be used solely in connection with the SPRP.

The defendants offer a number of arguments contrary to plaintiffs' three theories. First, the Government reiterates its argument that the government cannot dispose of property without explicit Congressional authority.[2] Second, relying on

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[2]The Court once again rejects this argument and notes that the cases relied on by the Government for this assertion involve condemnation proceedings in which the government acquired the disputed property under its power of eminent domain. It is true that in those circumstances--i.e., condemnation proceedings--the Attorney General is authorized to agree, on behalf of the United States, to return the property to the original land owners. See 40 U.S.C. § 258f. The cases cited by the Government, e.g., *United States v. 434.00 Acres of Land*, 792 F.2d 1006, 1010 (11th Cir. 1986) ; *United States v. Three Parcels of Land*, 224 F. Supp. 873, 876 (D. Alaska 1963), state that the court is without authority to order the revesting of title in the original owners because § 256f entrusts such matters to the Attorney General. This case is a quiet title action in which the plaintiffs donated easements to the government. This is not a condemnation proceeding, and the Government did not acquire the disputed property under its powers of eminent domain. Statutes

what is purported to be federal common law, the Government argues that abandonment, or a change in the use of the property, does not invalidate the Government's title. Third, the Government argues that, in any case, it has not abandoned the Pipeline or the servitudes. Fourth, the Government responds directly to plaintiffs, theories and asserts that Weeks Island is not the dominant estate, and there are no resolutory conditions in the Donation. Similarly, LIG contends that the servitudes have not terminated under any theory of state law. For the reasons more fully explained below, the Court holds that the Government has maintained ownership of the servitudes and the Pipeline continuously since 1979, and plaintiffs' lawsuit is without merit.

**B. Standard of Review**

Summary judgment is appropriate when there is no genuine issue as to any material facts, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v.* Catrett, 477 U.S. 317, 322-23 (1986). Factual controversies are resolved in favor of the non-moving party only if there is an actual controversy, that is, when both parties have submitted evidence of contradictory facts. Little v. Liquid Air *Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc) . The court must determine whether there are any genuine issues of material fact which preclude judgment as a matter of law. *Anderson v.* Liberty *Lobby, Inc.*, 477 U.S. 242, 250 (1986).

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governing condemnation proceedings are wholly inapplicable to this lawsuit, and cases involving such proceedings are therefore distinguishable.

## C. Governing Law and Nature of the Servitudes

The first question raised by the parties is whether state or federal law governs the interpretation of property rights in an action brought under the QTA. Courts are divided on this issue: Many courts apply state law without comment. *See, e.g., Patterson v. Buffalo Nat'l River,* 76 F.3d 221 (8th Cir. 1996); *Bradford v. United States,* 651 F.2d 700 (10th Cir. 1981) ; *Lethin v. United States,* 583 F. Supp. 863 (D. Or. 1984). Some courts conclude that federal law controls in actions under the QTA but that courts may consult state property law and adopt it as the federal standard if that law is neither hostile nor contrary to federal interests. *See, e.g., Kafrige v. United States,* 893 F. Supp. 691, 697-700 (S.D. Tex. 1995)([Tlhe construction of a deed to which the United States is a party is a question of federal law . . . . 11) ; *cf. CTH.H Enters. v. Brunson (In re Havard)* , 209 B.R. 196, 198 (W.D. La. 1997) (stating that "'federal law governs questions involving the rights of the United States arising under nationwide federal programs'" and finding that federal positive law provided sufficient guidance to resolve disputed issue (quoting, United *States v. Kimbell Food, Inc.,* 440 U.S. 715, 726, 99 S.Ct. 1448, 1457 (1979)). Still other courts acknowledge that the QTA should be interpreted according to federal law, but federal courts may look to state law to determine the application of statutory language to specific facts. *See, e.g., Amoco Prod. Co.* v. United *States,* 619 F.2d 1383, 1387 (10th Cir. 1980) (failing to question whether state law would interfere with federal interests and noting that "questions involving ownership, transfer and title to real estate have traditionally been resolved according to the laws of the state where the realty is located"); *Adams United States,* 687 F. Supp. 1479, 1492 (D. Nev. 1988) (same). In some instances, the court fails to specify whether state or federal law is applicable. *See, e.g., Stevenson v. United*

*States*, 960 F.2d 147 (Table), 1992 WL 79532 (4th Cir. Apr. 21, 1992) (unpublished opinion).

The courts are also split on whether federal or state law controls in condemnation proceedings and in cases brought under the Declaratory Taking Act. *Compare United States v. 93.970 Acres of* Land, 360 U.S. 328, 332-33, 79 S.Ct. 1193, 1195-96 (1959) (condemnation proceeding in which Court held that condemnation involves essential government functions and that "where essential interests of the Federal Government are concerned, federal law rules unless Congress chooses to make state laws applicable"); *Higginson v. United States*, 384 F.2d 504, 506 (6th Cir. 1967) (citing *93.970 Acres* and stating that "nature of title taken by federal condemnation is subject to determination by federal law unless Congress states otherwise"); *United States v. 434.00 Acres of Land*, 792 F.2d 1006, 1009-10 & n.5 (11th Cir. 1986) (stating that federal government is not subject to common law property rules), *with Coos County Sheep Co.* v. *United States*, 331 F.2d 456, 460 (9th Cir. 1964) (stating that in condemnation proceeding state property law controls nature and extent of rights of United States acquired under easement) ; *United States v. Certain Property* Located in Borough *of Manhattan*, 306 F.2d 439, 444-45 (2d Cir. 1962) (looking to state law to determine government's property rights in condemnation proceeding) ; *Foster v. United States*, 607 F. 2d 943, 948 (Ct. Cl. 1979) ("[Wlhen the United States contracts to acquire or in fact acquires real property within a particular state, the laws of that state control what rights arise in the United States therefrom.").

In the absence of any controlling authority in the Fifth Circuit, and against this background of conflicting rulings, this Court must decide the choice-of-law issue. The specific question in this case is whether the interpretation of a

conveyance of real property between a private party and the government should be determined by state or federal law when the property was acquired by the government under the authority of the Energy Policy and Conservation Act and the lawsuit was brought under the Quiet Title Act. The Court notes that neither the QTA nor the EPCA specifies the appropriate rule of decision. In the absence of a statutory directive, the Court must first consider whether the matter justifies reliance on federal law. *See Clearfield Trust Co. v. United States*, 318 U.S. 363, 366-67, 63 S.Ct. 573, 574-75 (1943).

This question seems to have been definitively resolved by the Supreme Court in *United States v. Little Lake Misere Land Co.*, 412 U.S. 580, 591-94, 93 S.Ct. 2389, 2396-98 (1973), a case initiated by the United States to quiet title to properties owned by the United States subject to mineral reservations in favor of various defendants. The Supreme Court concluded that interstitial federal lawmaking was appropriate in that case because it was dealing with the interpretation of a land acquisition agreement that was ,(a) explicitly authorized, though not precisely governed by the Migratory Bird Conservation Act and (b) to which the United States itself [was] a party." *Id.* at 594, 93 S.Ct. at 2397. The Court noted that "dealings which may be ordinary' or 'local' as between private citizens raise serious questions of national sovereignty when they arise in the context of a specific constitutional or statutory provision; particularly is this so when transactions undertaken by the Federal Government are involved." Id. at 592, 93 S.Ct. at 2397.

In this case, under explicit Congressional authority from the EPCA, and to the extent necessary or appropriate to implement the Strategic Petroleum Reserve Plan, the Government accepted donations of easements from the

plaintiffs and acquired the rights to the property in dispute. Although the United States did not initiate this lawsuit, the plaintiffs brought suit under the QTA, and the Government is properly a party to this action. As was the case in Little Lake, the issues in this case are substantially related to an established program of government operation, and federal interests are clearly implicated by this lawsuit. Thus, the Court f inds that the present situation warrants the application of federal common law. *Cf. Georgia Power Co. v. 138.30 Acres of* Land, 617 F.2d 1112, 1115 (5th Cir. 1980) (finding that federal interests were sufficiently implicated to warrant protection of federal law where power of eminent domain was exercised by licensee of government agency).

The question remaining is whether the court should borrow state law principles to fashion the federal common law. *See, Georgia Power Co.*, 617 F.2d at 1115 (citing *United States v. Kirabell Foods, Inc.*, 440 U.S. 715, 99 S.Ct. 1448 (1979)). In *Georgia Power*, the Fifth Circuit held that:

> Basic considerations of federalism, as embodied in the Rules of Decision Act, prompt us to begin with the premise that state law should supply the federal rule unless there is an expression of legislative intent to the contrary, or, failing that, a showing that state law conflicts significantly with any federal interests or policies present in this case.

Id. at 1115-16 (citations omitted). This Court has not discovered any legislative intent under either the EPCA or the QTA that federal common law and not state law should supply the rule of decision. The Court therefore turns to "an examination of the considerations relevant to the nature of the

specific governmental interests and to the effects upon them of applying state law." Id. at 1118 (internal quotations omitted).

The Supreme Court stated in Little Lake that "even assuming in general terms the appropriateness of 'borrowing' state law, specific aberrant or hostile state rules do not provide appropriate standards for federal law." Little Lake, 412 U.S. at 595-96, 93 S.Ct. at 2398. *See Georgia Power*, 617 F.2d at 1118 ("If the effect of applying state law is virtually to nullify the federal objectives, then there is a conflict that precludes application of state law."). In Little Lake, the Supreme Court reviewed a state law that subjected land acquisitions authorized by Congress to a rule of retroactive imprescriptibility. In exercising its authority to acquire land under the Conservation Act, the government gave the prior landowners a mineral reservation of ten years. The state statute would have barred the reversion of the mineral rights to the United States and in effect extend the prior landowners' rights indefinitely. The Supreme Court explained that this rule was plainly hostile to federal interests because retroactive application of the statute to the United States "deprive[d] it of bargained-for contractual interests." *Little Lake*, 412 U.S. at 597, 93 S.Ct. at 2399. The Supreme Court thus concluded that state law did not govern the reversion of the mineral rights at issue in the litigation. *See also, North Dakota v United States*, 460 U.S. 300, 317-20, 103 S.Ct. 1105-06 (1983) (finding state law hostile to federal interests and not applying it to easements acquired by United States); *cf. United States v. Albrecht*, 496 F.2d 906, 911-12 (8th Cir. 1974) (holding that if state law would bar conveyance of property to United States then it should not apply because it would destroy national program of acquiring property to aid in breeding of migratory birds).

After a careful review of the applicable state law and the facts of this case, the Court finds that if Louisiana law as interpreted by the plaintiffs applies, then it conflicts with federal interests as stated in the legislation that created the Strategic Petroleum Reserve Plan. The purpose of the SPRP is to "minimize the impact [in any region in the United States] of any interruption or reduction in imports of refined petroleum and residual fuel oil." 42 U.S.C. 9 6234(a). To implement the SPRP, Congress gave the Department of Energy the authority to enter into contracts and to "acquire by purchase, condemnation, or otherwise, land or interests in land" for the location of pipelines. Id. § 6239 (f ) (B), (G) . The statute also authorizes the government to "use, lease, maintain, sell or otherwise dispose of storage and related facilities pursuant to this part." Id. § 6239 (f) (D).

Under plaintiffs' interpretation of Louisiana law, the rights-of-way at issue are predial servitudes. A predial servitude is [a] charge on a servient estate for the benefit of a dominant estate." La. C.C. art. 646. The servient estate and the dominant estate must belong to different owners, and the charge on the servient estate must provide a benefit to the dominant estate. Id. art. 647. Plaintiffs argue that the dominant estate is the Weeks Island Storage Facility, property owned by the Government.

Under Louisiana law, a predial servitude is inseparable from the dominant estate, and it cannot be alienated or encumbered separately from the dominant estate. Id. art. 650. Thus, if the Government's rights-of-way are predial servitudes, Louisiana law would prohibit the Government from selling the rights-of-way separately from the Weeks Island Facility. The statute creating the SPRP, however, specifically empowers the Secretary to use, maintain, sell or otherwise dispose of storage and related facilities acquired pursuant to the legislation. The

statute does not restrict the goveinment's ability to dispose of related facilities, such as a pipeline, to a simultaneous sale or disposition of a storage facility. Nor does the Donation itself so limit the transferability of the Pipeline right-of-way. Since state law would prevent the Government from selling the pipeline rights-of-way separate from the Weeks Island Facility, it would produce a result that is clearly inconsistent with both federal interests and the Government's intentions as evidenced by the Donation.

In an analogous situation, the Fifth Circuit rejected the application of Louisiana law after it determined that Louisiana property law would interfere with federal interests. In *Shell offshore, Inc. v. Kirby Exploration Co.*, 909 F.2d 811 (5th Cir. 1990), the application of Louisiana law on predial servitudes, which provided for the extinguishment of a predial servitude when the servient estate is abandoned, conflicted with the outer Continental Shelf Lands Act, which prohibited an owner from abandoning an offshore platform under the circumstances at issue. In light of the conflict, the court refused to apply Louisiana law. Id. at 815.

In any case, plaintiffs are wrong to characterize the servitudes created by the Donation as predial servitudes under Louisiana law. The Court finds that the rights-of-way created by the Donation are properly interpreted as personal servitudes of rights of use. Louisiana law recognizes that parties may create a personal servitude of right of use in favor of a natural person or legal entity for a specified use of an estate less than full enjoyment. La. C.C. art. 641. In contrast to a predial servitude, which benefits a dominant estate, a personal servitude is for the benefit of a designated person or legal entity. Howevei, the right of use may confer only an advantage that may be established by a predial servitude, id. art. 640, and

such personal servitudes are regulated by the rules governing predial servitudes to the extent that their application is compatible with the rules governing personal servitudes. Id. art. 645.[3] The Civil Code also provides that a right of use is transferable unless prohibited by law or contract. Id. art. 643.

When the instrument which creates the servitude raises a question as to whether the right granted benefits an estate or a particular person, i.e., whether it is a predial or personal servitude, the rules of contractual interpretation as provided in the Civil Code and the rules applicable specifically to servitudes govern its resolution. A.N. Yiannopoulos, *Louisiana Civil Law Treatise, Predial Servitudes*, § 128, at 370 (2d ed. 1997); *cf.* Guillotte *v. Wells*, 485 So.2d 187, 189 (La. App. 2d Cir. 1986) (examining circumstances under which servitude was created in order to determine its character when servitude was created by oral agreement). Under Louisiana law, the 11 interpretation of a contract is the determination of the common intent of the parties. 11 La. C.C. art. 2045. "This intention 'must be determined from the stipulations of the entire instrument..... Yiannopoulos, supra, at 370-71 *(quoting Rock island Arkansas & Louisiana Railroad Co. v. Gournay*, 17 So. 2d 8, 9 (La. 1943) ) . Servitudes impose restraints on property and restrict the free use and disposal of the estate. It follows that 11[slervitudes claimed under title are never sustained by implication; the title creating them must be express as to their nature and extent, as well as to the estate that owes them and

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[3]Therefore, any theory of termination premised on the existence of a dominant estate is necessarily incompatible with a personal servitude of right of use because there is no dominant estate. However, other grounds for termination--e.g., the happening of a resolutory condition--may govern personal servitudes of right of use.

the estate to which they are due.,, *Williams v. Wiggiz2s,* 641 So.2d 1068, 1072 (La. App. 2d Cir. 1994). *See* Yiannopoulos, supra, at 372 (citing cases with same language); see *also Williams,* 641 So.2d at 1068 ("A predial servitude may be created by title where the grantor sufficiently expresses an intent to create such [a] servitude.,,). The Civil Code also provides that 11[w]hen the right granted be of a nature to confer an advantage on an estate, it is presumed to be a predial servitude. B La. C, C. art. 733. However, "[w]hen the right granted is merely for the convenience of a person, it is not considered to be a predial servitude, unless it is acquired by a person as owner of an estate for himself, his heirs, and assigns." Id. at. 734.

Here, the Donation evidences a clear intent to benefit the United States, and it does not express an intention to benefit any particular property owned by the government, Rather, the Donation generally states that 11 [t] his donation is made and accepted for and in consideration of [plaintiffs'] desire to aid their country in the establishment of a Strategic Petroleum Reserve." Donation at 4. The Donation does not even mention Weeks Island, the property which the plaintiffs claim to be the dominant estate, and it does not restrict the Government to developing the SPRP at any particular location or to using any specific storage facility. Further, that the legislation provided for the disposal of the property makes it unlikely that the parties intended to restrict the Government's ability to sell the servitudes separately from Weeks Island, a restriction that would apply if the rights were predial servitudes. Indeed, the Donation specifically provides that the rights transferred are assignable. Finally, the utility of the predial servitude must be attributed to any person who, at any given time, happens to own the dominant estate. *See* Yiannopoulos, supra, § 9, at 33. Thus, "[ilf the utility is attributed to a designated owner, the

servitude is personal rather than predial." Id. Here, plaintiffs expressly contend that the rights-of-way were intended to benefit only the United States in the establishment of the SPRP, a position inconsistent with an intent to grant rights-of-way on their property that would exist in favor of the owner of Weeks Island, whoever that may be. The United States acquired these easements to enable them to construct and operate a pipeline that would be a part of the SPRP. It is clear that the utility of the servitudes is attributed to the United States, not Weeks Island or any other estate.

For all of these reasons, the Court concludes that under Louisiana law the servitudes created by the Donation are personal servitudes of rights of use. This interpretation of the application of state law neither frustrates federal interests nor constrains the Government's bargained-for interests. Accordingly, the Court borrows Louisiana law to fashion the federal common law.

**D. Plaintiffs' Theories of Termination**

Plaintiffs' first theory of termination--the destruction of the dominant estate--necessarily fails because the easements are personal servitudes and are not dependent upon the existence of the dominant estate. The remainder of plaintiffs, theories are premised on the argument that the servitudes created by the Donation were limited ones, granted only for the construction and operation of a pipeline to assist in the Strategic Petroleum Reserve Plan. The plaintiffs argue that using the servitudes for any other purpose, i.e., for a purpose that does not assist the SPRP, amounts to abandonment, an express cause for termination under the Donation. In a similar vein, plaintiffs also argue that the servitude has terminated because the purpose for which it was granted, i.e., only for the SPRP

pipeline, has become an impossibility. As a final variation of this same theme, plaintiffs contend that using the servitude in a manner inconsistent with the limited purpose alleged is a resolutory condition, the happening of which results in the termination of the servitude under Louisiana law. See La. C.C. art. 773 ("A predial [or personal use] servitude established for a term or under a resolutory condition is extinguished upon the expiration of the term or the happening of the condition.").

As in *Lethin v. United States*, 583 F: Supp. 863, 871 (D. Or. 1984), the issue in this case boils down to whether the language of the Donation so strongly indicates an intent to limit the easement to the single use urged by the plaintiffs that any other use is unauthorized. If so, the servitude was abandoned, impossible to use, and/or terminated when the Government stopped using it for purposes of the SPRP.

The Court concluded above that the servitudes at issue are personal servitudes of rights of use. As such, they are regulated by the application of rules governing predial servitudes, to the extent their application is compatible with the rules governing rights of use servitudes. La. C.C. art. 645. The Civil Code makes clear that "[tlhe use and extent of such servitudes are regulated by the title by which they are created." Id. art. 697. *See* Yiannopoulos, supra, § 149, at 416 (11 [T] he extent and manner of use of conventional servitudes established by title are primarily determined in accordance with the intention of the parties, as expressed in the provisions of the title."). Thus, whether the Donation imposes a restriction of a single permissible use of the servitudes depends upon the description of the easement contained in the Donation and the specific language used in the agreement. Under Louisiana law, 11 (w) hen the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in

search of the parties, intent." Id. art. 2046. The Civil Code also provides that "[tlhe words of contract must be given their generally prevailing meaning." Id. art. 2047.

In Louisiana, explicit language is required in order to impose either a restrictive or dissolving condition. *See, e.g.*, Farrell *v. Hodges Stock Yards, Inc.*, 343 So.2d 1364, 1367-69 (La. 1977) (contract stating ",this grant of way shall continue in full force as long as the said property shall be used for the business for which it is now used or any other of like nature"' did not provide for automatic dissolution upon change of use); accord Ralph E. Boyer et al., *The Law of* Property 85 & n.12 (4th ed. 1991) (explaining fee simple determinable under common law and noting that words such as "until," "during," "while," or "so long as" are often used to create special limitation). Further, non-use or abandonment provisions in contracts are typically enforced when a specific limited purpose is clearly contemplated by the parties. *See, e.g.*, Meijer v. international Minerals *& Chemical* Corp., 741 F. Supp. 1238 (M.D. La. 1990) (enforcing provision that provided that 11[ilf at any time said right of way and easement is not used during a period of two years for the purpose hereinabove specified, or in the event it should at any time be used for any other purpose than herein granted . . . all rights vested in grantee . . . cease and terminate" but finding that use was ongoing and consistent with agreement); *Primeaux v. Brath Sugar Co.*, Ltd., 484 So.2d 717 (La. App. 3d Cir. 1986) (finding resolutory condition and reversionary interest when contract stated that "in case said Refinery shall cease to operate . . . then and in that case said land shall revert to the said appearer"); *Noel Estate v. Kansas City Southern & Gulf Ry. Co.*, 175 So. 468 (1937) (finding that contract limited use of land to railroad purposes only when contract stated that land was "conveyed for railroad purposes only and this grant shall be in perpetuity or so long as it is used

only and this grant shall be in perpetuity or so long as it is used by said company, its successor, or assigns, for railroad purposes, but if abandoned by said company for such use and purpose, then said land shall revert to the grantor").

The Donation between the plaintiffs and the Government states in pertinent part:

> The above named parties declare that we, by this act, do donate, convey, transfer, set over and deliver, without any warranty, liability, or recourse, but with full substitution and subrogation in and to all rights and action of warranty which said grantors have or may have against all preceding owners and vendors, unto the UNITED STATES OF AMERICA, and its assigns, including its officers, agents, servants, and contractors, a perpetual and assignable easement and right-of-way in, on, over and across the land for the location, construction, operation, maintenance, alteration, repair. and patrol of a single pipeline in the establishment, management. and maintenance of the Strategic Petroleum Reserve, as authorized by . . . Congress . . . .
>
> TO HAVE AND TO HOLD the complete perpetual ricfhts, powers, Privileges of the easement and/or servitude hereby conveyed unto the UNITED STATES OF AMERICA and its assigns, including its officers, agents, servants, and contractors, forever, subject to the other provisions hereof. . . .
>
> The aforementioned servitude is acquired by the United States of America for an(d] [sic] in connection with the Department of Energy's Strategic Oil Storage Program.

> This donation is made and accepted for and in consideration of Grantors' desire to aid their country in the establishment of a Strateciic Petroleum Reserve and in further consideration of Grantee's agreement to construct and operate said pipeline in accordance with the following specific requirements: . . .
>
> 2. The causes for termination of this easement shall include, but not be limited to, the following: (a) abandonment, . . . . Upon termination for any reason the United States of America shall have the election at its sole discretion of abandoning the pipeline and related improvements in place or removing it at its own expense. Such removal, if so elected, shall be completed within one year after termination. If abandonment in place is elected, Grantee shall have no claim against Grantors for compensation or damages, and the pipeline and related improvements shall become the property of the Grantors without any payment to the Grantee.

Donation at 2-5 (emphasis added).

The Court concludes that the language of the Donation does not indicate an intent to restrict the use of the easement solely to the Strategic Petroleum Reserve Plan. It seems clear to the Court that although the easement was granted for the purpose of the "location, construction, operation, maintenance, alteration, repair, and patrol of a single pipeline," any reference to the SPRP merely demonstrates the existence of a public purpose,[4] describes the reasons for the United States'

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[4]4A description of the public purpose is routinely included by the United States in its property agreements when it acquires land

acquisition, and declares the overall purpose for which the plaintiffs expect their donated land to be used. The Donation in this case does not use any words of limitation, and it does not contain any language to suggest that the easement was intended to last only so long as the Pipeline was used in connection with the SPRP. Unlike the cases cited supra, *see* Meijer, 741 F. Supp. at 1240; *Primeaux*, 484 So.2d at 717, the Donation does not indicate that the pipeline easement must be used "only" in connection with the SPRP or that the easement would terminate if it were used "for any other purpose." Indeed, no limiting words are used when the Donation states its overall purpose.[5] The plaintiffs, interpretation of the Donation is contrary to the clear words of the agreement, and their interpretation of "abandonment" is inconsistent with the term's generally prevailing meaning. "Abandonment" refers to the voluntary relinquishment of possession of a thing by the owner with the intention of terminating ownership, but without vesting it in any other person. *Black's Law Dictionary 2* (6th ed. 1990). *Cf. Guzzetta v. Texas Pipeline Co.*, 485 So.2d 508, 510 n.1 (La. 1986) (using definition of abandonment from Black's in determining whether plaintiffs stated claim for termination of pipeline right-of-way). Moreover, just as the Court concluded in its prior order that selling or transferring an

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through a condemnation action. Under the Declaration of Taking Act, the government is required to state the public use for which the land is taken. See 40 U.S.C. § 258a.

[5]The Court notes that plaintiffs fail to cite any cases in which a general statement of the purpose for the donation or conveyance was construed as limiting the use to a single use absent explicit language of exclusivity.

interest in property is not a disclaimer, such actions also do not demonstrate an intent to abandon the property.

Further, the sale of the Pipeline and the underlying rights--of-way to LIG will not significantly change the character of the use of the easement. The easement was originally acquired by the Government for the construction and maintenance of a single pipeline that would transport crude oil. LIG will use the Pipeline to transport natural gas, essentially for the same purpose as it was used by the Government. The relative burdens on the plaintiffs, estates are therefore identical.

In addition, the plaintiffs' interpretation of the Donation--that the servitudes may be used by the Government only f or a purpose that assists the SPRP--is contrary to the plaintiffs, intentions of conveying "a perpetual and assignable easement" to the Government. If plaintiffs, interpretation of the limitations on the easements' use governed, the provision making the servitudes assignable would be rendered meaningless because no person or entity but the Government can operate the SPRP. The existence of such an assignability provision implicitly creates a servitude with a significantly broader permissible use. *Cf. United States v. 434.00 Acres of Land,* 792 F.2d 1006 (llth Cir 1986) (stating in dicta that provision allowing for reassignment for commercial purposes implicitly created broad scope for permissible use of easement notwithstanding language in conveyance creating,"an easement and right for the establishment, maintenance, operation and use of a safety area, in connection with the Kings Bay Ammunition Loading Terminal"').

Courts from other jurisdictions faced with similar factual circumstances have also concluded that language in the agreement setting forth the purpose for the conveyance does

not limit the grantee's use of the property or create a determinable fee. In *Lethin v. United States,* for example, the court examined a deed in which the original property owners granted to the United States a right-of-way "'for the purposes of carrying out the intentions of Congress in providing for the establishment of Life Saving Stations.'" Lethin, 583 F. Supp. at 870. The court determined that the easement was not limited to use only for life saving stations, and the deed merely indicated that the easement was intended to be used in a manner consistent with the purpose of the conveyance itself, i.e., to provide access to the river. Id. at 872. The court also concluded that the deed did not suggest that the easement was to revert or expire if used for something other than life saving services. See id. ("The deed contains no language suggesting a reversion or automatic expiration of the easement if used for purposes other than those associated with life saving services."). Other courts reach identical conclusions. *See also, Selectmen of Town of Nahant* v. United *States,* 293 F. Supp. 1076, 1078 (D. Mass. 1968) (construing similar deed and holding that "[t]here is no language indicating that the estate is to expire when the property ceases to be used for the purposes mentioned or that it is intended to last only so long as the property is so used. . . . The mere recital in the deed of the purpose for which the land conveyed was to be used in not itself sufficient to impose any limitation or restriction on the estate granted.") ; United *States Trust Co. v. State,* 543 A.2d 457, 460 (N.J. Super. Ct. App. Div. 1988) (interpreting conveyance for life saving station and finding that "the intent to create a determinable fee is found in the use of the words of limitation, such as 'while,' 'during,' and 'so long as.' . . . . Words of limitation merely stating a purpose for which the land is conveyed usually do not indicate an intent to create a determinable fee."); *cf. Meijer*, 741 F.Supp. at 1240-41 (interpreting broadly how pipeline could be "used" when

agreement specified that rights would terminate "[ilf at any time said right of way and easement is not used during a period of two years for the purpose hereinabove specified, or in the event it should at any time be used for any other purpose than herein granted"').

This Court's interpretation of the Donation between plaintiffs and the Government is also consistent with the results reached by courts in the condemnation setting, and under federal law, where it is well established that a declaration of taking generally provides for a fee simple and that " [a] subsequent abandonment of the original purpose for which land was acquired does not affect the validity of the condemnation. *Higginson v. United* States, 384 F.2d 504, 507 (6th Cir. 1967); *see United States v. Three Parcels of* Land, 224 F. Supp. 873, 877 (D. Alaska 1963) (stating that if land is acquired in fee simple unconditional, "land may be devoted to a different use without any impairment of the estate acquired or any reversion to the former owners" ; *Boorstein v. Massachusetts* Port Authority, 345 N.E.2d 668, 670 (Mass. 1976) ("The recitation in the declaration of taking that the easement was 'to be used as a pipeline right of way in connection with the Naval Fuel Depot' did not limit the Federal government's interest in the easement. The proposed use was recited in the declaration of taking not as a limitation but in order to demonstrate the existence of a public purpose for the condemnation . . . ."); *City of Alameda v. Todd Shipyards Corp.*, 632 F. Supp. 333, 338 *(N.* D. Cal. 1986) (interpreting agreement in which government was party and concluding that phrase describing purpose for conveyance did not express reversionary interest but simply declared purpose for which grantor expected land would be used).

In summary, the Court rejects plaintiffs, definition of "abandonment," finds that the servitudes and the Pipeline are not impossible to use, and concludes that the Donation does not impose a limited use resolutory condition. Thus, using the servitudes in a manner that does not assist the SPRP does not extinguish the easements, and the Court concludes that the rights created in the Donation and conveyed to the Government never reverted to the original landowners. Plaintiffs, claims for relief in this Court are therefore without merit.

Accordingly, and for all of the foregoing reasons, defendants' motions for summary judgment are GRANTED, and plaintiffs, motion for summary judgment is DENIED.

New Orleans, Louisiana, this 27th day of May, 1998.

SARAH S. VANCE
UNITED STATES DISTRICT JUDGE

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
1998 MAY 27 P 12:50
LORETTA G. WHYTE
CLERK

**APPENDIX C**

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 98-30657

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JERON J. LAFARGLTE; SUSAN KYLE, on behalf of themselves and all others similarly situated; RONALD RICHARD, JR-; SEPTUVIE RICHARD, JR.; WINNIFRED RICHARD CHAWAGNE; SHARON RICHARD BIGGS; SIDNEY J. RICHARD, JR., ARTHUR H. OWENS; PRUDENCE LAFARGUE BURNS; HOPE RICHARD SANSING; RICHARD WAYNE OWENS; SHAYNE OWENS BELL; BARBARA VEEDER MCKOIN; CAROL VEEDER WONMffiR; DIANE SIMONS LOVELL,

Plaintiffs-Appellants,

versus

UNITED STATES OF AMERICA, LOUISIANA INTRASTATE GAS COMPANY, L.L.C.,

Defendants-Appellees.

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Appeal from the United States District Court for the Eastern District of Louisiana (97-CV-2393R)

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ON PETITION FOR REHEARING

Before REAVLEY, JOLLY and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Appellants have petitioned for rehearing and cite two Louisiana Supreme Court decisions holding that a reversionary clause is not required to protect the interest of the donor when the purpose of the donation is no longer met. Those cases are: *Board of Trustees of Columbia Road Methodist Episcopal Church of Bogalusa v. Richardson*, 44 So.2d 321 (La. 1950) and *Orleans Parish School Bd. v. Campbell*, 132 So.2d 885 (La. 1961). The donation in those cases placed an express condition or charge on the donee, which is not the case at hand.

We previously noted that, under Louisiana law, "[e]ach provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole." La. Civ. Code art. 2050. The circumstances that distinguish our case *from Richardson* and *Campbell* are that (1) the donation in our case repeatedly states that the servitude conveyed is assignable and perpetual, and (2) the conveyance listed several express grounds for termination, including ten years of non-use, abandonment, and the failure of the government to commence construction of the "Strategic Petroleum Reserve pipeline" by December 1, 1981, but did not provide for a termination if the use of the pipeline changed after completion of the pipeline. In these circumstances, and reading the contract as a whole, we conclude that Louisiana law would not recognize an implied reversionary interest that is triggered when the use of the pipeline changes. We believe that the Louisiana courts would

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*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

hold that, given the express grounds for termination, and the language stating that the servitude is otherwise perpetual and assignable, the servitude should revert to the donor (or his heirs) only for those reasons expressly stated. Louisiana law recognizes the maxim *expressio unius est exclusio alterius* - the expression of one implies the exclusion of others - in the construction of statutes and agreements. *Theriot v. Midland Risk Ins. Co.*, 694 So.2d 184, 187 (La. 1997); *Harper v. Citizens' Bank of Louisiana*, 25 So. [sic] 466, 468 (La. 1899).

Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (Fed. R. App. and 5th Cir. R. 35), the Petition for Rehearing En Banc is DENIED.

**U.S. COURT OF APPEALS**
**FILED**
**OCTOBER 13 1999**
**CHARLES R. FULBRUGE, III**
**CLERK**

**APPENDIX D**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

JERON J. LAFARGUE; SUSAN KYLE; RONALD RICHARD; SEPTIME RICHARD, JR.; WINNIFRED RICHARD CHAMPAGNE; SHARON RICHARD BIGGS; SIDNEY J .JUDGE: VANCE RICHARD, JR.; ARTHUR H. OWENS; PRUDENCE LAFARGUE BURNS; HOPE MAGISTRATE: RICHARD SANSING; RICHARD WAYNE SECTION "R" (1) OWENS; SHAYNE OWENS BELL; BARBARAVEEDER MCKOIN; CAROL VEEDER WOMMER; and DIANE SIMONS LOVELL; on behalf of themselves and all others similarly situated,

plaintiffs,

v.

THE UNITED STATES OF AMERICA and
LOUISIANA INTRASTATE GAS COMPANY, L.L.C.,

defendants.

CIVIL ACTION
NO. 97-2393
JUDGE: VANCE
MAGISTRATE: RICHARD SANSING;
SECTION "R" (1)

**DECLARATION OF PATRICIA C. SIGUR**

Patricia C. Sigur, pursuant to 28 U.S.C. § 1746, declares and states:

1. I, Patricia C. Sigur, am employed as a Realty Officer by the United States Department of Energy ("DOE"), Strategic Petroleum Reserve ("SPR") Project Management Office. I have been employed by DOE since 1986, and my

office is located at 900 Commerce Road East, New Orleans, Louisiana 70123. A Realty officer is responsible for a number of activities or functions relating to real estate, including the acquisition, disposal, utilization, planning and appraisal of real property under the control of SPR.

2. For the purpose of making this Declaration, I have reviewed, among other materials, the documents identified in the following subparagraphs.

(a) A document entitled "Quitclaim Deed," which was executed on August 22, 1997, by which the United States of America ("Government") remised, or bargained, or released, or sold, or conveyed, or granted by quitclaim certain property or interests therein to the Louisiana Intrastate Gas Company, L.L.C. ("LIGC"). Because I signed the Quitclaim Deed ("Deed") on behalf of the Government, I have a true and correct copy of the Deed in the official files I maintain in the normal course of business. I have attached to this Declaration as Exhibit A a true and correct copy of the Deed, which includes all materials or exhibits that are attached thereto.

(b) A document entitled "First Amended Complaint -- Class Action" ("Complaint") that I have been advised by attorneys for the Government has been filed in this case, and it has a certificate of service dated October 24, 1997. Among other things attached to the Complaint is a document, dated August 10, 1979, that is identified as "Exhibit A" and is entitled "Donation of Servitude And Easement" ("Donation"). The Donation was executed by a representative of the Government and by the owners of the real property or interest therein, all of which is located in St. Mary Parish, Louisiana, that is the subject of the Donation. Under the terms of the Donation, the parties named therein granted to the Government, among other things, a perpetual and assignable easement and

right-of-way for the real property or interest therein that is the subject of the Donation. The copy of the Donation attached to the Complaint that I reviewed is not complete. Because the Government was a signatory to the Donation, I have a complete, correct and true copy of the Donation in the official files that I maintain in the normal course of business. Therefore, I have attached to this Declaration as Exhibit B a complete, true and correct copy of the Donation, which includes all materials or exhibits attached thereto.

(c) A document entitled "Answer of Defendant United States of America to First Amended Complaint -- Class Action" that I have been advised by attorneys for the Government has been filed in this case, and it has a file stamp date of December 2, 1997.

(d) A document entitled "Answer and Counterclaim" that I have been advised by attorneys for the Government has been filed in this case. This document is signed by attorneys for LIGC, and it has a certificate of service dated December 10, 1997.

3. Involved in this case is a 36 inch diameter pipeline, with appurtenances and improvements related thereto or associated therewith, that is approximately 67 miles in length and extends from the St. James Terminal, which is located in St. James Parish, Louisiana, to Weeks Island, which is located in Iberia Parish, Louisiana. This pipeline, which I will refer to as the "Weeks Island Pipeline" or the "Pipeline," was used by the Government to transport crude oil. The St. James Terminal and Weeks Island sites I have just identified are both fee properties owned by the Government, and I will refer to them as the "St. James Station" and the "Weeks Island Station," respectively. The Weeks Island Pipeline begins/ends on the St. James Station and begins/ends on the Weeks Island Station.

Therefore, each end of the Weeks Island Pipeline is located on a fee property owned by the Government, and at each end of the Pipeline is a device commonly known in the industry as a "Pig Trap," which I am advised is used to clean a pipeline. Beginning on the Weeks Island Station and generally heading in an easterly direction towards the St. James Station, the Weeks Island Pipeline, as is indicated by the Deed, is located on land in Iberia, St. Mary, St. Martin, Assumption and St. James Parishes, Louisiana. Attached to this Declaration as Exhibit C is a schematic I prepared for illustrative purposes that generally shows the placement of the Weeks Island Pipeline in these five parishes.

4. Prior to the construction of the Pipeline, the Government did not own, and did not intend to purchase, the real property between the St. James and Weeks Island Stations on which the Pipeline was to be placed. In order to lay the Pipeline, the Government had to secure rights-of-way from the landowners. The rights-of-way were secured for all such property by means of the Government obtaining perpetual and assignable easements, servitudes or license agreements, all of which I will refer to as "Easements." The Government obtained the Easements by means of direct purchase, or condemnation or donation.

5. The Deed describes in detail all of the property or interest therein that the Government did or did not remise, or bargain, or release, or sell, or convey, or grant to LIGC, including certain interests or rights related to the Government's fee owned properties at the Weeks Island and St. James Stations. with respect to the Weeks Island Pipeline and the Easements associated with the Pipeline, I have been requested by attorneys for the Government to describe the interests, if any, that the Deed transferred to LIGC, and the interests, if any, the Government retained.

6. The Government remised, or bargained, or released, or sold, or conveyed, or granted to LIGC, "as is" and "where is," all of the Government's right, title and interest in the Weeks Island Pipeline and appurtenances thereto, as it extends from the Pig Trap on the Weeks Island Station to the Pig Trap on the St. James Station, traversing over land located in the Parishes of Iberia, St. Mary, St. Martin, Assumption and St. James, as well as another improvements and appurtenances on, under and over all land, which is located outside of the Government owned fee properties at the Weeks Island and St. James Stations, necessary to enable LIGC to operate and maintain the Pipeline. Therefore, based on the Deed that I executed on behalf of the Government, I am authorized to, and do hereby formally, declare that the Government disclaims all interest in the Weeks Island Pipeline.

7. The Government also remised, or bargained, or released, or sold, or conveyed, or granted to LIGC, "as is" and "where is," all of the Government's right, title and interest in certain of the Easements that the Government had obtained from landowners through direct purchase, or condemnation or donation for the placement of the Weeks Island Pipeline. More specifically, with the exception of the Easements identified below in paragraph 8, the Government sold and conveyed to LIGC all of the Easements that it had obtained in the Parishes of Iberia, St. Mary, St. Martin, Assumption and St. James for the placement of the Weeks Island Pipeline. The Easements that were sold and conveyed to LIGC are identified on page 1 of the Deed, subparagraph (a), and in Exhibit A to the Deed. Based on the Deed that I executed on behalf of the Government, I am authorized to, and do hereby formally, declare that the Government disclaims all interest in such Easements.

8. As is indicated above in paragraph 7, the Government did not sell and convey to LIGC some Easements on certain land located in Assumption and St. James Parishes that had been obtained for the Weeks Island Pipeline by direct purchase, or condemnation or donation. The Easements relate to eleven tracts of land, which are identified on page 2 of the Deed, subparagraph (c), and in Exhibit B to the Deed. Such Easements were not sold and conveyed to LIGC because another SPR pipeline was also located on the same tracts of land. This other SPR pipeline extends from the St. James Terminal to Bayou Choctaw, Iberville Parish, Louisiana, and it is located approximately parallel to the Weeks Island Pipeline on these certain tracts of land in Assumption and St. James Parishes. Because tire Bayou Choctaw pipeline was not being transferred to LIGC, the Government did not sell and convey to LIGC the Easements for the tracts of land across which both pipelines traverse. To ensure that LIGC could operate and maintain that portion of the Weeks Island Pipeline that traverses these tracts of land, the Government granted and conveyed to LIGC a perpetual right of ingress and egress to the use of all supporting rights-of-way granted to the Government by its Easements. Although the Government granted and conveyed a perpetual right of ingress and egress to its rights-of-ways for these Easements, the Government does not disclaim its interests in these Easements.

9. To the extent that the named Plaintiffs' real property or interest therein that is the subject of this case is located anywhere in Iberia, St. Mary, St. Martin, Assumption or St. James Parish, and is not one of the tracts described above in paragraph 8, I am authorized to, and do hereby formally, declare, based my execution of the Deed on behalf of the Government, that the Government disclaims all interest in the real property or interest therein adverse to the Plaintiffs. This disclaimer specifically applies to any portion of the Weeks

Island Pipeline that traverses the named Plaintiffs' land and, with the exception stated in paragraph 8, any Easement that the Government had obtained from the named Plaintiffs for the placement of the Weeks Island Pipeline.

Further, Declarant saith not.

## APPENDIX E

PROJECT: Weeks Island Facility
TRACTS: 309E-1. 309E-2, 309E-3, 319E-1, 319E-2, 319E-3

AUGUST 10, 1979

DONATION

OF

SERVITUDE AND EASEMENT

UNITED STATES OF AMERICA
STATE OF LOUISIANA
PARISH OF ST. MARY

KNOW ALL MEN BY THESE PRESENTS THAT THE FOLLOWING PERSONS CAME AND APPEARED:

MARIE BLANCHE RICHARD VEEDER, a widow, who was married but once and then to Joseph Earl Veeder, deceased, whose mailing address is Charenton, Louisiana 70523;

MARGUERITE AIMEE RICHARD, a single female, never married, whose mailing address is P. 0. Box 49, Charenton, Louisiana 70523;

IRMA AGNES RICHARD COOPER, married to William Cooper with whom she is presently living

and residing at 95 Lee Street, Franklin, Louisiana 70538;

ODETTE E. RICHARD SIMONS, married to Gerald S. Simons, with whom she is presently living and residing and whose mailing address is c/o Mrs. Diane Lavell, 4004 Pershings Avenue, Fort Worth, Texas 76107;

ALVAN HENRY LAFARGUE, JR., married to Reba Cagle LaFargue, with whom he is presently living and residing at 922 Kirby Street, Lake Charles, Louisiana 70601;

PRUDENCE ELIZABETH IAFARGUE BURNS, married to Bernard F. Burns, with whom she is presently living and residing at 530 West Logan, Sulphur, Louisiana 70663;

AUGUSTIN A. RICHARD, married to Julia Pullen Richard, with whom he is presently living and residing at 326 West Drive, Baton Rouge, Louisiana 70608;

HAROLD P. RICHARD, married to Marcella LeHuene Richard, with whom he is presently living and residing at 4366 Bluebonnet Road, Baton Rouge, Louisiana 70809;

ELISE RICHARD QUIRK, married to Andrew Quirk, with whom she is presently living and residing at 331 Park Avenue, New Orleans, Louisiana 70124;

CONRAD JOSEPH RICHARD, married to Martha Belle Harris Richard, with whom he is presently

living and residing at 1867 Longwood Drive, Jackson, Mississippi 39212;

SEPTIEME SERVEROUS RICHARD, married to Terry Sylvester Richard, with whom he is presently living and residing at 3619 Lansdowne Drive, Montgomery, Alabama 36111;

ROBERT G. NICHOLS, an Attorney whose mailing address is P. 0. Box 1526, Jackson, Mississippi 39201, appearing herein as Guardian of ROBERT LOUIS RICHARD, a single male, never married, whose mailing address is c/o Agnell Cuevas, Rt. 3, Box 824, Bay St., Louis, Mississippi 39520;

MARJORIE RICHARD LAFOSSE, married to Percy LaFosse, with whom she is presently living and residing at 5005 Inverness, Baytown, Texas 77502;

WINNFRED ANNIE MARIE RICHARD CHAMPAGNE, married to E. J. Champagne, with whom she is presently living and residing at 115 Oak Street, Franklin, Louisiana 70538;

SIDONIE JOHN RICHARD BODIN, married to Russell Bodin, with whom she is presently living and residing at 2569 Echo Drive Northeast3 Atlanta, Georgia 30329;

SHARON JUDITH LORRAINE RICHARD BIGGS, married to Donald Biggs, with whom she is presently living and residing at 513 Renwood Circle, Lafayette, Louisiana 70501;

SIDNEY J. RICHARD, JR., married to Gail Allen Richard, with whom he is presently living and residing at 48 East Hain, Franklin, Louisiana 70528;

HOPE MARY RICHARD SANSING, married to Parks William Sansing, with whom she is presently living and residing, and whose mailing address is P. 0. Box 224, Forest Hill, Louisiana 71430;

LORETTA ANNE BIENVENU RICHARD, a widow, who was married but once and then to Arthur Richard, deceased, presently living and residing at 1607 Providence, New Iberia, Louisiana 70560;

ARTHUR JUDE RICHARD, married to Shelia Goff Richard, with whom he is presently living and residing at 1833 Longwood, Jackson, Mississippi 39212;

KATHLEEN ANN RICHARD FERRIS, married to Norman B. Ferris, with whom she is presently living and residing at Rouge 5, Compton Road, Murfreesboro, Tennessee 37130;

MARK JOSEPH RICRARD, a single male, never married who is presently living and residing at 1607 Providence, New Iberia, Louisiana 70560;

JERONS J. LAFARGUE, formerly married to Lelia Young LaFargue, and presently living and residing at Sheridan Marina, Slip #2, Impossible Dream, Fort Walton Beach, Florida 32548;

MELINDA SUSAN LAFARGUE KYLE, married to James W. Kyle, with whom she is presently living and

residing at 920 Lilliput Lane, Sulphur, Louisiana 70663;

ARTHUR OWENS, married to Sandra Champagne Owens, with whom he is presently living and residing at 325 Pioneer Drive, Baton Rouge, Louisiana 70814;

BLANCHE OWENS TRUMPS, married to Anthony J. Trumps, with whom she is presently living and residing and whose mailing address is Box 1, Route 5, Beaufort, South Carolina 29902;

SHAYNE OWENS BELL, married to Michael Bell, with whom she is presently living and residing and whose mailing address is c/o Blanche Owens Trumps, Box 1, Route 5, Beaufort, South Carolina 29902;

RICHARD WAYNE OWENS, formerly married to Judy Breaux, and presently living and residing at Bayou Woods Villa, Apartment 101, 4200 Maplewood Drive, Sulphur, Louisiana 70663;

SIDWIN JOHN MICHAEL RICHARD, married to Carolyn Hunter, with whom he is presently living and residing at 108 Hamel Street, New Iberia, Louisiana 70560;

The above named parties declare that they are of the age of majority.

The above named parties declare that this conveyance is of their separate property, under their separate control, and for the benefit of their separate estate.

LORETTA ANNE BIENVENU RICHARD, widow of Arthur Richard, residing in New Iberia, Louisiana, appearing herein as usufructary.

The above named parties declare that we, by this act, do donate, convey, transfer, set over and deliver, without any warranty, liability, or recourse, but with full substitution and subrogation in and to all rights and action of warranty which said grantors have or may have against all preceding owners and vendors, unto the UNITED STATES OF AMERICA, and its assigns, including its officers, agents, servants, and contractors, a perpetual and assignable easement and right-of-way in, on, over and across the land for the location, construction, operation, maintenance, alteration, repair, and patrol of a single pipeline in the establishment, management, and maintenance of the Strategic Petroleum Reserve, as authorized by the Act of Congress approved December 22, 1975, Public Law 94-163, 89 Stat. 871, 42 U.S.C. 6201, including the right to trim, cut, fell and remove therefrom, all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of -way; reserving, however to the landowers, their heirs and assigns, all such rights and privileges as may be hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads, pipelines, levees and to existing public drainage facilities, and to the existing outstanding mineral rights of record belonging to third parties; the land or waters in, on, over and/or to which the rights, easements and servitude previously described are hereby conveyed being described as follows:

All of the right, title, and interest of Grantors in and to the areas described on Exhibits "A-1 and A-2", and shown on Exhibits B-1 and B-2 attached hereto and made a part hereof as Tracts numbered 309E-1 and 319E-1.

TO HAVE AND TO HOLD the complete perpetual rights, powers, privileges of the easement and/or servitude hereby conveyed unto the UNITED STATES OF AMERICA and its assigns, including its officers, agents, servants, and contractors, forever, subject to the other provisions hereof.

Further, the above described Grantors donate and convey to the above described Grantee, the full complete temporary and assignable easement and right-of-way in, on, over and across the land for a period not to exceed three years beginning on the 2nd day of August 1979, for use by the United States, its representatives, agents, and contractors, for the construction of a single pipeline in the establishment, management and maintenance of the Strategic Petroleum Reserve, as authorized by the Act of Congress approved December 22, 1975, Public Law 94-163, 89 Stat. 871, U.S.C. 6201, including the right to borrow and/or deposit excavated material thereon and the further right to remove temporary structures on the land and to perform any other work necessary and incident to the construction of the said pipeline, together with the righ t to clear, cut, fell, and remove therefrom all trees, underbrush, obstructions and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or

abridging the rights and easements hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads, pipelines, levees, and to existing public drainage facilities, and to the existing outstanding mineral rights of record belonging to third parties; the land in, on, and across which the easement and servitude previously described are hereby conveyed being described as follows:

All of the right, title, and interest of Grantor in and to the areas described on Exhibits "C-1. C-2, C-3 and C-4", and shown on Exhibits "B-1 and B-2", attached hereto and made a part hereof as Tracts numbered 309E-2, 309E-3, 319E-2, and 319E-3.

TO HAVE AND TO HOLD the above described rights, powers, privileges of temporary easement and servitude hereby conveyed unto the United States of America, and its assigns, including its officers, agents, servants, and contractors for the aforesaid period of three (3) years; subject to the other provisions hereof.

This donation of the perpetual and temporary rights and privileges of easement, and servitude described is made subject to all existing easements for public roads and highways, public utilities, railroads, pipeline, levees, public drainage facilities and mineral rights of record. Grantor expressly retains all mineral rights with respect to all minerals in, on, or under the area covered by this servitude together with the right to explore for, develop, and produce any or all of said minerals, provided said exploration, development, and

production, if any, shall not interfere with the rights herein conveyed.

The aforementioned servitude is acquired by the United States of America for an in connection with the Department of Energy's Strategic Oil Storage Program.

The Grantor warrants that all state and parish taxes up to and including the taxes due and exigible in the year 1978 have been paid, and is not subject to existing mortgages or other encumbrances. This servitude and easement is granted without any warranty or recourse of any kind against Grantors whatsoever. Grantors do not warrant or represent the correctness of any survey or any plat attached hereto purporting to show the location of Grantors' land or any improvement thereon, and nothing herein shall operate as an estoppel against Grantors' establishing the correct location of the boundaries of or improvements on Grantors' land in the event that the same are not correctly shown on the maps, if any, attached hereto.

This donation is made and accepted for and in consideration of Grantors' desire to aid their country in the establishment of a Strategic Petroleum Reserve and in further consideration of Grantee's agreement to construct and operate said pipeline in accordance with the following specific requirements:

1. The rights herein donated to Grantee shall expire, terminate, and cease and this act shall be rendered null, void and unenforceable on December 31. 1981 if by such date Grantee shall have not commenced construction of the Strategic Petroleum Reserve pipeline.

2. The causes for termination of this easement shall include but not be limited to, the following:(a) abandonment, (b) removal of the pipeline, (c) ten years non-use, or (d) execution of an affidavit by an authorized representative of the United States of America stating that the pipeline has been abandoned. Upon termination for any reason the United State of America shall have the election at its sole discretion of abandoning the pipeline and related improvements in place or removing it at its own expense. Such removal, if so elected, shall be completed within one year after termination. If abandonment in place is elected, Grantee shall have no claim against Grantors for compensation or damages, and the pipeline and related improvements shall become the property of the Grantors without any payment to the Grantee.

3. Because Grantors anticipate that it may become necessary for Grantors or their agents, successors, or assigns, to cross over the Strategic Reserve Petroleum pipeline to be laid in the servitude area, Grantee agrees: to allow Grantors, their agents, successors or assigns, to lower the Strategic Reserve Petroleum pipeline at Grantors' expense.

Because Grantee cannot permit lowering of the pipeline to interfere with fill or drawdown of the Strategic Petroleum Reserve, the lowering of the pipeline will be subject to Grantee's approval, prior to commencement of the lowering operations, of the Grantors'

specifications, construction plans and construction schedule. Grantors shall further supply Grantee with a bond for full replacement of that portion of the line to be lowered. Said bond shall be forfeited for damage to Grantee's pipeline, failure to meet specifications, failure to complete construction according to plans and failure to meet construction schedule if such failure to meet the schedule interferes with the operation or maintenance of Grantee's pipeline.

This document may be executed in counterpart, and if counterparts of this document are executed, the signatures of the parties, as affixed to each counterpart, may be combined into and used as a single document.